

Exhibit 5

**Redacted Version of
Document Sought to
be Sealed**

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

- - -

CHASOM BROWN, WILLIAM : Case No.
BYATT, JEREMY DAVIS, :
CHRISTOPHER CASTILLO : 5:20-cv-03664-
and MONIQUE TRUJILLO, : LHK
individually and :
on behalf of all other :
similarly situated, : CONFIDENTIAL

Plaintiffs, :

v. :

GOOGLE, LLC, :

Defendant. :

- - -

Wednesday, June 16, 2021

- - -

Videotaped 30(b)(6) deposition of
GLENN BERNTSON held pursuant to notice,
beginning at 10:27 AM, on the above date,
and recorded stenographically by
Constance S. Kent, a Certified Court
Reporter, Registered Professional
Reporter and Notary Public.

* * *

MAGNA LEGAL SERVICES
(866) 624-6221
www.MagnaLS.com

APPEARANCES:

BOIES SCHILLER FLEXNER LLP
 BY: MARK C MAO, ESQ
 BEKO REBLITZ-RICHARDSON, ESQ
 44 Montgomery Street, 41st Floor
 San Francisco, California 94104
 (415) 293-6800
 mmao@bsflp.com
 brichardson@bsflp.com
 Attorneys for Plaintiffs

BOIES SCHILLER FLEXNER LLP
 BY: ROSSANA BAEZA, ESQ
 (pro hac vice)
 100 SE 2nd Street, 28th Floor
 Miami, Florida 33131
 (305) 539-8400
 rbaeza@bsflp.com
 Attorney for Plaintiffs

MORGAN & MORGAN
 BY: RYAN McGEE, ESQ
 201 N Franklin Street, 7th Floor
 Tampa, Florida 33602
 (813) 223-5505
 rmcgee@forthepeople.com
 Attorney for the Plaintiff

SUSMAN GODFREY L L P
 BY: ALEXANDER FRAWLEY, ESQ
 1900 Avenue of the Stars, Suite 1400
 Los Angeles, California 90067
 (310) 789-3100
 afrawley@susmangodfrey.com
 Attorneys for Plaintiffs

APPEARANCES, continued
 QUINN EMANUEL URQUHART & SULLIVAN,
 LLP
 BY: STEPHEN BROOME, ESQUIRE
 JOSEF ANSORGE, ESQUIRE
 1300 I Street, NW, Suite 900
 Washington, D.C. 20005
 (202) 538.8000
 stephenbroome@quinnemanuel.com
 josefansorge@quinnemanuel.com
 Counsel for Defendants

ALSO PRESENT:

Matthew Gubiotti, Esquire
 In-house counsel for Google
 Jay Bhatia
 Chris Thompson, 233 Analytics, LLC
 Adam Depew, Video Specialist
 Noah Fox, Trial Technician

INDEX

Testimony of: GLENN BERTSON
 By Mr Mao 9
 By Mr Broome 372
 By Mr Mao 378

EXHIBITS

NO	DESCRIPTION	PAGE
Exhibit 1	Plaintiff's Notice of 30(b)(6) Deposition	10
Exhibit 2	Confidential-Google Display Server for [REDACTED] by [REDACTED] Bates	15
Exhibit 3	Highly Confidential-Documents Entitled Fantastic Identifiers and Where to Find Them, Bates GOOG-BRWN- 00078278 through 78385	107
Exhibit 4	Confidential-Documents entitled [REDACTED] Bates GOOG-BRWN- 00027305 through 27313	124
Exhibit 5	Confidential-Documents, http://go [REDACTED] coverage-ratio, GOOG-BRWN-00026161 through 26168	193

NO	DESCRIPTION	PAGE
Exhibit 6	Highly Confidential-Documents entitled Biscotti Identifiers, Bates GOOG-BRWN-00078361 through 78363	222
Exhibit 7	Highly Confidential-Documents entitled GFP Cookies, Bates GOOG-BRWN-00078370 through 78371	258
Exhibit 8	Confidential-Documents entitled Logs Sources and Access Types, Bates GOOG-BRWN-00029445 through 29453	302
Exhibit 9	Confidential-Documents entitled Chrome Logs, Bates GOOG-BRWN- 00029381 through 29385	312
Exhibit 10	Highly Confidential-Documents entitled [REDACTED] Bates GOOG-BRWN-00078389 through 78390	335
Exhibit 11	Confidential-Documents entitled Google Analytics, Backend Core Processing Pipelines, GOOG-BRWN- 00078439 through 78452	350
Exhibit 12	Documents reviewed by Mr. Bertson in preparation for deposition (not attached)	356
Exhibit 13	Bertson Fact Sheet (not attached)	357

1 measurement; that is, if at some point a
2 Biscotti is sent in that we don't have
3 the Gaia ID, we're still able to
4 attribute, for example, that somebody
5 purchased something in relation to an ad
6 that was shown.

7 So [REDACTED] and my
8 understanding of it is specifically Gaia-
9 keyed sets of IDs that are used to
10 support inference about conversions cross
11 device.

12 Q. So let's explore that for a
13 little bit. Generally as a use case, are
14 Google products allowed to blend the data
15 between Biscotti and Gaia?

16 A. No.

17 Q. Why is it in this case
18 [REDACTED] Group IDs are allowed to, I
19 don't know if you'd use the word
20 leveraged or linked, or whatever you
21 would choose, you know, for this
22 instance, why is it for the purposes of
23 conversion of ads you're allowed to use
24 both Gaia and Biscotti?

1 a one-to-one, right, it's the user -- the
2 Gaia user specifically has somehow
3 converted on an ad, it, you know, where
4 there was a Biscotti instead of a Gaia
5 ID; isn't that correct?

6 A. The way that conversions are
7 surfaced and presented to advertisers, et
8 cetera is in aggregate. So an advertiser
9 will create a campaign that says, I'd
10 like to serve this 7-Up ad and here --
11 here are the criteria for where I want
12 the ad to show up, et cetera, and then if
13 they want to actually see how many people
14 then buy that soda because they saw the
15 ad, what we provide back to the -- the
16 advertiser is not a list of IDs of users
17 that converted, but just how many
18 conversions happened because of their
19 campaign. So --

20 Q. Is that an exact count? But
21 that is an exact count that Google
22 provides, right, how many conversions?

23 A. That is correct.

24 Q. And that conversion is based

1 A. Google has a set of, as --
2 as you noted, policies that are meant to
3 prevent reidentifiability, prevent
4 joining of sort of sensitive IDs in terms
5 of, say, signed in and signed out. So
6 the vast majority of the way all of our
7 systems work, we maintain a very strict
8 separation.

9 The exception in this
10 particular case is because conversions
11 are always recorded in aggregate and
12 they're not associated to an individual
13 user, we're not leaking any data about an
14 individual user by being able to count
15 the number of conversions associated with
16 a given campaign.

17 And so [REDACTED] used in
18 this way is specifically has a carve out
19 set of permissions that are linked to the
20 fact that individual users are not being
21 tracked, only aggregate level insights as
22 it relates to conversions are being
23 provided.

24 Q. Right. But a conversion is

1 off of both Gaia and Biscotti IDs; isn't
2 that correct?

3 A. In the -- if a
4 [REDACTED] graph -- if the
5 [REDACTED] graph is used to be able to
6 make the imprints in terms of a cross
7 device conversion, then the answer is
8 yes.

9 Q. Okay. And you charged the
10 advertiser a specific amount of dollars
11 based on the number of conversions; isn't
12 that correct?

13 A. Advertising campaigns can be
14 set up based on a number of certain
15 criteria. It could be that if, let's
16 say, a brand-related campaign, it's the
17 number of impressions; that is, how many
18 people saw the ad. Conversions is simply
19 one of the metrics that an advertiser can
20 choose as the metrics associated with
21 what they pay.

22 Q. Right. But for whether it
23 be for conversions or number of
24 impressions; in other words, whether it's

Page 370

1 MR. BROOME: Are you done?

2 Are you done, Mark?

3 MR. MAO: I am not done.

4 I'm reserving my rights.

5 MR. BROOME: You're done,

6 right? I mean, do you have -- let

7 me -- let me put it this way: Do

8 you have any more questions for

9 the witness to ask right now?

10 We're not bringing him back

11 because you want to reserve time

12 hypothetically.

13 MR. MAO: We are off the

14 clock, my clock. If you want to

15 go on your clock --

16 MR. BROOME: Yeah, I do.

17 I'm just asking are you done with

18 your questioning? It's a pretty

19 straightforward question. Are you

20 done with your questioning of this

21 witness?

22 MR. MAO: I'm reserving my

23 rights.

24 MR. BROOME: Reserving your

Page 372

1 questions now? I'm going to take

2 your silence, your non-response as

3 a yes.

4 - - -

EXAMINATION

6 - - -

7 BY MR. BROOME:

8 Q. Mr. Berntson, do you recall
9 that Mr. Mao asked you some questions
10 today about Google mapping Biscotti IDs
11 and [REDACTED] and conversion
12 tracking?

13 A. Yes.

14 Q. And I believe you testified
15 that mapping in [REDACTED] requires a
16 Gaia ID; is that -- is that right?

17 A. That is correct.

18 Q. For the dataflow that's at
19 issue in this case where users are on
20 their browsers, they're signed out of
21 their Google accounts, they're in private
22 browsing mode, would there be any mapping
23 from Gaia to Biscotti?

24 A. No, because when you go into

Page 371

1 rights for what?

2 MR. MAO: I'm reserving my

3 rights to ask additional questions

4 of a witness that's properly

5 prepared to testify to the topics,

6 including the topics which the

7 court had actually ordered.

8 MR. BROOME: Okay. But you

9 don't have any more questions for

10 Mr. Berntson?

11 MR. MAO: Disagree. I don't

12 know.

13 MR. BROOME: You don't know

14 if you have any more questions for

15 him?

16 MR. MAO: Steve, stop

17 burning my time.

18 MR. BROOME: Do you have any

19 more questions for Mr. Berntson?

20 MR. MAO: I'm pausing my

21 portion.

22 MR. BROOME: Okay. I'm

23 going to take that as a no.

24 Did -- can I -- can I ask my

Page 373

1 private browsing mode, you start off with

2 a completely empty cookie jar. A

3 Biscotti is created, and if you don't

4 sign in to Google, there's no Gaia to map

5 that new Biscotti to. The Biscotti that

6 is present on the non-incognito browser

7 instance is not shared with the incognito

8 browser instance so there's no way of

9 creating that mapping from an incognito

10 session.

11 Q. Okay. And -- and conversely

12 would there be any mapping from Biscotti

13 to Gaia under those same conditions?

14 A. No. Again for similar

15 reasons, there is no Gaia to map that

16 Biscotti to.

17 Q. Mr. Mao asked -- also asked

18 you a number of questions about the

19 X-Client-Data header.

20 Do you recall that?

21 A. Yes.

22 Q. Do you understand that the

23 plaintiffs in this case have proposed

24 that Google could use the absence of the

Page 374

1 X-Client-Data header to identify users
2 who are in incognito mode?

3 A. Yes.

4 Q. And does Google use the
5 absence of the X-Client-Data header to
6 identify users who are in incognito mode?

7 A. No.

8 Q. And would that be a good way
9 to identify incognito users?

10 A. No.

11 Q. And why is that?

12 A. Because there are cases that
13 will lead to false positives; that is,
14 where you see an empty X-Client-Data
15 header and you assume it's incognito but
16 not and false negatives where the reverse
17 is also true. There are processes that
18 can result in empty client -- empty
19 X-Client-Data headers and to take an
20 empty client -- X-Client-Data header and
21 populate values.

22 Q. Can you give us a couple of
23 examples?

24 A. Sure. For the first case

Page 376

1 this is because the variation IDs are
2 basically instructions as to what new
3 features are enabled in the browser, and
4 so Chrome, after it starts out, will make
5 an asynchronous call to retrieve these
6 data from the server, and if that server
7 endpoint is blocked by a firewall, no
8 X-Client-Data header is provided, none of
9 the variation IDs. So that's another
10 case where you can have an empty
11 X-Client-Data header.

12 Q. Thank you. That's very
13 helpful.

14 Mr. Berntson, do -- do you
15 understand that you have been designated
16 by Google to testify on topics, with the
17 exception of Topic No. 5 to which Google
18 objected to producing a witness, Topics 1
19 through 4 and 6 through 12? You
20 understand that you've been designated to
21 testify on those topics?

22 A. Yes, I do.

23 Q. On behalf of Google?

24 A. Yes, I do.

Page 375

1 where there are instances where the
2 X-Client-Data header is empty and it's
3 not in incognito browsing, there -- there
4 are quite a few different ways that that
5 can happen. One is if it's a new browser
6 instance, no X-client header is present
7 in any call out from the browser.

8 The second is if you haven't
9 used your browser for 30 days or more,
10 the X-client header data is considered to
11 be stale and just purged and no
12 X-Client-Data header is passed.

13 Another case is if the
14 variation IDs that are carried in the
15 X-Client-Data header, if too many are
16 returned to Chrome to prevent the
17 requests coming from Chrome from being
18 too large, they just delete them all and
19 so you'd see no X-Client-Data header.

20 Yet another permutation is
21 the presence of a firewall can also
22 prevent Chrome, the browser, from getting
23 the variation IDs that are used to
24 populate the X-Client-Data header, and

Page 377

1 Q. And -- and did you -- did
2 you indeed prepare to testify on all of
3 those topics?

4 A. I did.

5 Q. How much time do you think
6 you spent preparing to testify on those
7 topics?

8 A. At least 25 hours.

9 Q. And did you conduct
10 interviews with relevant subject matter
11 experts in order to educate yourself on
12 the topics for which you've been
13 designated?

14 A. I did. I interviewed eight
15 different people.

16 Q. Okay. And -- and did you
17 review documents in order to educate
18 yourself on the topics for which you've
19 been designated?

20 A. Yes, and those have been
21 entered as Exhibits 12 and 13.

22 Q. Okay. And that's -- that's
23 a -- a binder of 61 documents by my
24 count; is that right?

Page 390

1 about [REDACTED] did you actually
2 prepare for the topic of [REDACTED]
3 before you came to testify here today?

4 A. It was a topic that was
5 covered briefly in one of my discussions.

6 Q. Is that topic for Chris Law?
7 Sorry, Chris -- Chris Liao or is that a
8 topic in which you are prepared to
9 discuss in terms of how that is actually
10 formed?

11 MR. BROOME: Objection to
12 form.

13 THE WITNESS: I believe -- I
14 believe I answered the question as
15 it relates to how [REDACTED]
16 works, what IDs are used and the
17 use cases that it supports. I
18 don't know what additional
19 information you're looking for as
20 it relates to [REDACTED]

21 MR. MAO: I have no further
22 follow-up. Again, I reserve my
23 rights.

24 MR. BROOME: Okay. All

Page 391

1 right. Well, thank you,
2 everybody. Thank you, Connie.
3 Our condolences. And Adam, Mark,
4 thank you. And see you all next
5 time.

6 THE VIDEOGRAPHER: Let me
7 take us off the record. Hold on.

8 The time is now 7:34 PM, and
9 we are going off the record.

10 (Witness excused.)

11 (Deposition concluded at
12 approximately 7:34 PM.)
13
14
15
16
17
18
19
20
21
22
23
24

Page 392

CERTIFICATE

1
2
3 I HEREBY CERTIFY that the
4 witness was duly sworn by me and that the
5 within deposition is a true and accurate
6 transcript of the stenographic notes of
7 the testimony given by the witness.

8 It was requested before
9 completion of the deposition that the
10 witness, GLENN BERNTSON, have the
11 opportunity to read and sign the
12 deposition transcript.

13
14
15
16
17
18
19
20
21
22
23
24



(The foregoing certification
of this transcript does not apply to any
reproduction of the same by any means,
unless under the direct control and/or
supervision of the certifying reporter.)

Page 393

INSTRUCTIONS TO WITNESS

1
2
3 Please read your deposition
4 over carefully and make any necessary
5 corrections. You should state the reason
6 in the appropriate space on the errata
7 sheet for any corrections that are made.

8 After doing so, please sign
9 the errata sheet and date it.

10 You are signing same subject
11 to the changes you have noted on the
12 errata sheet, which will be attached to
13 your deposition.

14 It is imperative that you
15 return the original errata sheet to the
16 deposing attorney within thirty (30) days
17 of receipt of the deposition transcript
18 by you. If you fail to do so, the
19 deposition transcript may be deemed to be
20 accurate and may be used in court.
21
22
23
24